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10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **EASTERN DIVISION**  
14

15 GAIL PORTER,

16 Plaintiff,

17 v.

18 CREDIT ONE FINANCIAL,

19 Defendant.

) Case No.: 5:16-cv-638

) **COMPLAINT AND DEMAND FOR**  
) **JURY TRIAL**

- ) **1. Violations of the Telephone**  
) **Consumer Protection Act, 47**  
) **U.S.C. § 227 et seq.**  
) **2. Violations of the Rosenthal**  
) **Fair Debt Collection Practices**  
) **Act, Cal. Civ. Code §1788 et**  
) **seq.**

20  
21 GAIL PORTER (Plaintiff), by her attorneys, WESTGATE LAW, hereby  
22 alleges and states as follows:

23 **INTRODUCTION**

24 1. Count I of Plaintiff's Complaint is based on the Telephone Consumer  
25 Protection Act, 28 U.S.C. § 227 *et seq.* (TCPA).

2. Count II of Plaintiff's Complaint is based on the Rosenthal Fair Debt  
Collection Practices Act, Cal. Civ. Code §1788 *et seq.* (RFDCPA).

**JURISDICTION AND VENUE**

3. Jurisdiction of this Court over Plaintiff's Complaint arises pursuant arises pursuant to 28 U.S.C. § 1331 as Plaintiff's claims arise under the laws of the United States, and this Court maintains supplemental jurisdiction over the state law claims alleged herein.

4. Defendant conducts business in the State of California thereby establishing personal jurisdiction.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the acts and transactions alleged in this Complaint occurred here, Plaintiff resides here, and Defendant transacts business here.

**PARTIES**

6. Plaintiff is a natural person residing in Landers, San Bernardino County, California.

7. Defendant is a business entity with a principal place of business in Las Vegas, Nevada.

8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

9. Since approximately 2015, and specifically within four years prior to the filing of this action, Defendant contacted Plaintiff to collect money, property or their equivalent, due or owing or alleged to be due or owing on a credit card account.

10. Plaintiff's alleged debt arose from consumer credit transactions.

11. Since approximately 2015, and specifically within four years prior to the filing of this action, Defendant constantly and continuously placed collection calls

1 and text messages to Plaintiff's cellular phone ending in 6278.

2 12. Defendant placed collection calls from numbers including, but not limited  
3 to, 408-338-0570, 361-271-1850, 360-928-7144, 323-400-4220, 310-504-3253,  
4 208-908-0901, 253-244-6151, 520-230-8405, 206-519-6609, 661-316-0029, 855-  
5 344-7841, 352-227-4093, 415-275-3800, 720-580-0310, 480-739-0926, 209-218-  
6 6013, 503-388-4499, 210-739-6460, 214-814-2001, 541-647-6430, and 214-814-  
7 2001.

8 13. On countless occasions, including but not limited to in or around  
9 December of 2015 and January of 2016, Plaintiff spoke with Defendant's  
10 representatives, informed Defendant's representatives that she could not pay the  
11 alleged debt, and requested that Defendant cease calling her cellular telephone.

12 14. On several occasions, including but not limited to in or around February  
13 and March of 2015, Plaintiff requested that Defendant cease placing text messages  
14 to her cellular telephone.

15 15. Despite Plaintiff's repeated requests to cease, Defendant continued to  
16 place multiple daily calls and text messages to Plaintiff's cellular phone, including  
17 up to eleven (11) communications in a single day.

18 16. At all times relevant to this action, while conducting business in  
19 California, Defendant has been subject to, and required to abide by, the laws of the  
20 United States, which included the TCPA and its related regulations that are set forth  
21 at 47 C.F.R. § 64.1200 ("TCPA Regulations"), as well as the opinions, regulations  
22 and orders issued by the courts and the FCC implementing, interpreting and  
23 enforcing the TCPA and the TCPA regulations.

24 17. At all times relevant to this action, Defendant owned, operated and or  
25 controlled an "automatic telephone dialing system" as defined by TCPA 47 U.S.C.

1 § 227(a)(1) that originated, routed and/or terminated telecommunications.

2 18. Within four years prior to the filing of this action, Defendant called  
3 Plaintiff at Plaintiff's cellular telephone using equipment which has the capacity to  
4 store or produce telephone numbers to be called, using random or sequential number  
5 generator and to dial such numbers, also known as an "automatic telephone dialing  
6 system" as defined by TCPA 47 U.S.C. § 227(a)(1)(A) and (B).

7 19. Defendant never received Plaintiff's consent to call Plaintiff on Plaintiff's  
8 cellular telephone using an "automatic telephone dialing system" or an "artificial or  
9 prerecorded voice" as defined in 47 U.S.C. § 227 (a)(1).

10 20. Even assuming arguendo that Defendant did have consent to call Plaintiff  
11 on Plaintiff's cellular telephone using an ATDS, that consent was subsequently  
12 revoked by Plaintiff. On several occasions, Plaintiff revoked consent by demanding  
13 that Defendant's calls cease.

14 21. At no time have Plaintiff and Defendant had an "established business  
15 relationship" as defined by 47 U.S.C. § 227(a)(2).

16 22. Defendant is not a tax exempt nonprofit organization.

17 23. Defendant's violation of the TCPA was willful because Plaintiff informed  
18 Defendant that she could not pay the alleged debt, informed Defendant that the calls  
19 were harassing, and requested that Defendant cease calling on countless occasions.

20 **FIRST CAUSE OF ACTION**

21 **Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227**

22 24. Plaintiff incorporates by reference all of the above paragraphs of this  
23 Complaint as though fully stated herein.

24 25. Defendant violated the TCPA. Defendant's violations include, but are not  
25 limited to the following

1 (a) Within four years prior to the filing of this action, on multiple  
2 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)  
3 which states in pertinent part, “It shall be unlawful for any person  
4 within the United States . . . to make any call (other than a call made  
5 for emergency purposes or made with the prior express consent of the  
6 called party) using any automatic telephone dialing system or an  
7 artificial or prerecorded voice — to any telephone number assigned to  
8 a . . . cellular telephone service . . . or any service for which the called  
9 party is charged for the call.

10 (b) Within four years prior to the filing of this action, on multiple  
11 occasions, Defendant willfully and/or knowingly contacted Plaintiff at  
12 Plaintiff’s cellular telephone using an artificial prerecorded voice or an  
13 automatic telephone dialing system and as such, Defendant knowing  
14 and/or willfully violated the TCPA.

15 26. As a result of Defendant’s violations of 47 U.S.C. § 227, Plaintiff is  
16 entitled to an award of five hundred dollars (\$500.00) in statutory damages, for each  
17 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that  
18 Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an  
19 award of one thousand five hundred dollars (\$1,500.00), for each and every violation  
20 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

21 27. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct  
22 in the future.

23 28. WHEREFORE, Plaintiff prays for relief as set forth below.

24 ///

**SECOND CAUSE OF ACTION**

**Violations of the Rosenthal Fair Debt Collection Practices Act,  
Cal. Civ. Code §1788**

29. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

30. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing a telephone to ring repeatedly or continuously to annoy the person called;
- b. Defendant violated §1788.11(e) of the RFDCPA by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances;
- c. Defendant violated §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692.

WHEREFORE, Plaintiff prays for relief as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

1. For statutory damages to the extent permitted by law;
2. For punitive damages to the extent permitted by law;
3. For pre-judgment interest to the extent permitted by law;
4. For injunctive relief as permitted by law;
5. For an award of her attorney's fees, costs and expenses incurred in the investigation, filing, and prosecution of this action; and

1           6. For such other and further relied as the Court may deem just and  
2           proper.

3                           **DEMAND FOR JURY TRIAL**

4           Please take notice that Plaintiff demands a trial by jury in this action.

5  
6  
7   Date: April 7, 2016

RESPECTFULLY SUBMITTED,

8   By: /s/ Matthew A. Rosenthal  
9   Matthew A. Rosenthal  
10    Attorney for Plaintiff,  
11    GAIL PORTER